

Exhibit 1

Exhibit 1

FILED
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CV20-01679

2020-10-20 11:16:15 AM

Jacqueline Bryant
Clerk of the Court

Transaction # 8124040 : csulezic

1 **CODE: \$1422**

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17 *Attorneys for Plaintiff*

18 *Canyon Flats III, LLC*

19 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

20 IN AND FOR WASHOE COUNTY

21 * * *

22 CANYON FLATS III, LLC,

23 CASE NO.:

24 Plaintiff,

25 DEPT. NO.:

vs.

26 SPIRE CONSTRUCTION, LLC,

27 Defendant.

28 **COMPLAINT FOR DECLARATORY JUDGMENT**

29 **Exempt from Arbitration (N.A.R. 3 – Declaratory Relief)**

30 Plaintiff Canyon Flats III, LLC (“Canyon Flats”) files this Complaint for Declaratory
31 Judgment against Defendant Spire Construction, LLC (“Spire”), and in support thereof complains
32 and alleges as follows:

33 **PARTIES**

34 1. Canyon Flats is a Nevada limited liability company with its principal place of
35 business in Roanoke, Virginia.



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1 2. Spire is a Florida limited liability company with its principal place of business in
2 Fort Myers, Florida, and conducts business as a licensed contractor in Washoe County, Nevada.

JURISDICTION AND VENUE

4 3. Jurisdiction and venue are proper in this Court pursuant to NRS 13.010 and NRS
5 108.2453 because this action arises out of a contract for the construction of a work of improvement
6 located in Washoe County, Nevada.

GENERAL ALLEGATIONS

8 4. Canyon Flats is the owner of property located at 661 North Center Street, Reno,
9 Nevada. Canyon Flats is developing on the property a 158-unit, student housing facility to serve
10 the residential needs of 508 university students in addition to providing these students a number
11 of on-site amenities (the “Project”).

12 5. By written contract dated December 20, 2018, Spire agreed to act as the general
13 contractor for the construction of the Project for a contract price of \$37,000,000.00 (the
14 “Contract”).

15 6. By agreement of the parties, Section 4.5 of the Contract includes a liquidated
16 damages provision that reads as follows:

17 Substantial Completion of the Work within the Contract Time is material
18 consideration of this Agreement. Determination of the Owner's damages for delay
19 is difficult and uncertain; the parties have agreed, however, that the sum of \$100
20 per day for each leased bedroom for which the Contractor cannot achieve
21 Substantial Completion within the Contract Time (the "Liquidated Damages") is a
22 reasonable estimate of the Owner's damages for delay. The Contractor shall pay
23 the Liquidated Damages to the Owner as liquidated damages and not as a penalty
24 in the event that the Contractor does not achieve Substantial Completion of the
25 Work sufficient for beneficial occupancy of living units with the Contract Time, as
26 amended by written Change Order or equitably adjusted by resolution of Claims
27 under Article 15 of the General Conditions. The Liquidated Damages are the
Owner's sole and exclusive remedy for delay in completion of the work.
Notwithstanding any other provisions of this Agreement, the total Liquidated
Damages paid by the Contractor to the Owner as damages for delay shall not exceed
Five Hundred Thousand Dollars (\$500,000.00). Notwithstanding any other
provision of this Agreement, liquidated damages shall not begin to accrue for any
leased bedroom that the tenant is able to occupy at least seven (7) days before
classes are scheduled to start.

28 //

1 7. Section 3.3.1 of the Contract stipulated that the work was to be completed within
 2 578 calendar days of the date of commencement of the Work, subject to a right to time extension
 3 if permitted under the Contract Documents.

4 8. Under Section 3.1 of the Contract, the “date of commencement” of the Contract
 5 was its date of execution, December 21, 2018. Thus, under the Contract, Spire was to achieve
 6 Substantial Completion by July 21, 2020. This Substantial Completion Date was earlier than the
 7 start of the liquidated damage period, contractually defined as August 17, 2020, seven days before
 8 university classes were scheduled to start for the 2020 academic year.

9 9. Nothing during the Project entitled Spire to any time extensions per the Contract.
 10 As late as January of 2020, Spire was representing to Canyon Flats that it would achieve
 11 Substantial Completion of the Project by July 20, 2020, or one day before the defined Substantial
 12 Completion Date.

13 10. Spire, however, without due cause failed to complete the Project by the Substantial
 14 Completion Date. In fact, Spire has still not completed the Project, and in its last schedule update,
 15 Spire indicated that it would not achieve Substantial Completion before November 5, 2020. Prior
 16 unmet promises regarding the schedule has Canyon Flats skeptical of Spire’s latest representation
 17 regarding when Substantial Completion and beneficial occupancy will occur.

18 11. Upon information and belief, the same endemic poor performance and delays have
 19 been occurring at another student housing project that Spire has been simultaneously constructing
 20 in Auburn, Alabama.

21 12. Due to Spire’s delay on the Project, Canyon Flats has incurred damages in excess
 22 of the Contract’s Liquidated Damages cap of \$500,000.00 (\$50,600.00 a day for 506 leased beds
 23 still unavailable over 45 days from the start of liquidated damage assessment). Canyon Flats is
 24 therefore entitled to \$500,000.00 in Liquidated Damages, which amount is less than the actual
 25 damages Canyon Flats has incurred because of the Spire-caused delay.

26 13. Under the terms of the Contract, Spire can assert no valid claim for additional time
 27 to deny Canyon Flats its right to \$500,000.00 in Liquidated Damages.

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1 14. The parties agreed in Section 15.1.1 of the “General Conditions,” incorporated by
2 reference in the Contract, that Canyon Flats’ right to impose Liquidated Damages was not
3 controlled by the claims and disputes provisions in the Contract. Thus Canyon Flats may seek the
4 declaratory judgment in this action without first exhausting any of the dispute resolution
5 procedures set forth in the Contract.

6 15. Under NRS 108.2453(2), Canyon Flats is entitled to bring this action in this Court
7 regardless of any provision in the Contract that calls for such action to be brought in another state.

8 16. Accordingly, pursuant to NRS Chapter 30, Canyon Flats seeks a judgment of this
9 Court declaring (a) that the Contract's Liquidated Damage provision can be enforced against Spire
10 and (b) that Canyon Flats is entitled to offset the retainage or other amounts that will be due Spire
11 upon final completion of the Project by the \$500,000.00 in Liquidated Damages stipulated in the
12 Contract.

FIRST CAUSE OF ACTION

(Declaratory Judgment)

15 17. Canyon Flats incorporates the allegations contained in the preceding and following
16 paragraphs as if set forth verbatim herein.

17 18. A true and justiciable controversy exists between Canyon Flats and Spire as to their
18 respective rights under the Contract, as described herein, including whether Canyon Flats is
19 entitled to \$500,000.000 in Liquidated Damages as a result of Spire's failure to timely achieve
20 completion of the work.

19. Canyon Flats has a protectable interest in the controversy, which interest is adverse
to the interests of Spire.

23 20. Pursuant to NRS 30.040(1), Canyon Flats is entitled to a judicial determination and
24 declaration of the rights, status, and legal relations at issue in this matter concerning Canyon Flats'
25 entitlement to Liquidated Damages.

26 21. It has been necessary for Canyon Flats to retain attorneys to bring this Complaint.
27 Accordingly, Canyon Flats is entitled to recover its reasonable attorney fees and costs incurred
28 herein.

WHEREFORE, Plaintiff Canyon Flats III, LLC, requests relief as follows:

1. For judgment in favor of Canyon Flats and against Spire declaring that (a) the Liquidated Damages provision set forth in the Contract is valid and enforceable and (b) Canyon Flats is entitled to apply the full amount of Liquidated Damages (\$500,000.00) as contemplated in the Contract against the retainage or other amounts that would otherwise be due Spire upon completion of the Project;

2. For an award of Canyon Flats' costs, disbursements, and attorneys' fees incurred in this action; and

3. For such other and further relief as the Court may deem just and proper.

The undersigned does hereby affirm that the foregoing document does not contain the social security number of any person.

DATED this 20th day of October, 2020.

WOODS ROGERS PLC

/s/ *Chelsea Latino*

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Attorneys for Plaintiff Canyon Flats III, LLC

4836-2748-3598, v. 1

1 Code: 4090

2 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
3 IN AND FOR THE COUNTY OF WASHOE

4 CANYON FLATS III, LLC,

5 Plaintiff /Petitioner /Joint Petitioner,

Case. No. CV20-01679

6 vs.

Dept. No. 1

7 SPIRE CONSTRUCTION, LLC,

8 Defendant / Respondent / Joint Petitioner.
/

9
10 SUMMONS

11 **TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE
12 AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND IN
WRITING WITHIN 21 DAYS. READ THE INFORMATION BELOW VERY
13 CAREFULLY.**

14 A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set
forth in that document (see complaint or petition). When service is by publication, add a brief
statement of the object of the action.

15 The object of this action is: _____.

16 1. If you intend to defend this lawsuit, you must do the following within 21 days after service
17 of this summons, exclusive of the day of service:
18 a. File with the Clerk of the Court, whose address is shown below, a **formal written
answer** to the complaint or petition, along with the appropriate filing fees, in
accordance with the rules of the Court, and;
19 b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address
is shown below.
20 2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this
Court may enter a judgment against you for the relief demanded in the complaint or
petition.

22 Dated this 20TH day of OCTOBER, 2020.

23 Issued on behalf of Plaintiff(s):

24 Name: Matthew C. Addison

25 Address: 100 W. Liberty Str.,
10th Floor, Reno, NV 89501

26 Court Phone Number: (775) 788-2000

27 Email: maddison@mcdonaldcarano.com

JACQUELINE BRYANT
CLERK OF THE COURT

By: /S/YVILORIA

Deputy Clerk

Second Judicial District

75 Court Street

Reno, Nevada 89501

FILED

Electronically

CV20-01679

2020-10-20 01:58:51 PM

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Transaction # 8124608 : yvilia

CODE: 3975

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR WASHOE COUNTY

* * *

CANYON FLATS III, LLC,

CASE NO.: CV20 - 01679

Plaintiff,

DEPT. NO.: 1

vs.

SPIRE CONSTRUCTION, LLC,

Defendant.

PLAINTIFF'S NRCP 7.1 DISCLOSURE STATEMENT

Pursuant to NRCP 7.1, Plaintiff Canyon Flats III, LLC (“Canyon Flats”) discloses that it is wholly owned by Canyon Flats II, LLC, which is wholly owned by Canyon Flats, LLC, and no publicly held entity owns 10% or more of Canyon Flats.

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The undersigned does hereby affirm that the foregoing document does not contain the social security number of any person.

DATED this 20th day of October, 2020.

WOODS ROGERS PLC

/s/ Chelsea Latino

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4852-7866-3118, v. 1



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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR WASHOE COUNTY

* * *

CANYON FLATS III, LLC,

CASE NO.: CV20-01679

Plaintiff,

DEPT. NO.: 15

vs.

SPIRE CONSTRUCTION, LLC,

Defendant.

WAIVER OF SERVICE OF SUMMONS

To: Canyon Flats III, LLC and its counsel of record

I have received your request to waive service of a summons in this action along with a copy of the Summons, Complaint for Declaratory Judgment, Plaintiff's NRCP 7.1 Disclosure Statement, two copies of this Waiver of Service of Summons, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

1 I understand that I, or the entity I represent, will keep all defenses or objections to the
2 lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the
3 absence of a summons or of service.

4 I also understand that I, or the entity I represent, must file and serve an answer or a motion
5 under Rule 12 within 60 days from October 22, 2020, the date when this request was sent (or 90
6 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered
7 against me or the entity I represent.

8 *The undersigned does hereby affirm that the foregoing document does not contain the
9 social security number of any person.*

10 DATED this 23rd day of October, 2020.

11 HOY CRISSINGER KIMMEL VALLAS



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